

Protest of)	
INTERNATIONAL JET AVIATION)	Date: September 1, 1987
)	
Solicitation No. ANET-87-02)	P.S. Protest No. 87-36

DECISION

International Jet Aviation Services (IJA) protests award of an air transportation contract for Express and Priority Mail to Evergreen International Aviation, Inc., (Evergreen), contending that its proposal was not properly evaluated.^{1/}

Solicitation No. ANET-87-02, issued by the Office of Transportation and International Services, Mail Processing Department, U.S. Postal Service Headquarters, requested proposals for air transportation of Express Mail and Priority Mail within 1 21 city network. Proposals were due on April 3, with service commencing on or after June 6.

The solicitation provided, in pertinent part, as follows:

Officers must be in the form of a closed loop network consisting of a matrix of city points. While the proposed network need not include all the points shown in Specifications Part A, the number of such points served will be considered in the Postal Service's evaluation of proposals for award.

Proposals were required to include a complete description of the operation of the offered network, including its city points and airports, the proposed tender and delivery times at each origin-destination pair, flight itineraries, specification of block times for departures and arrivals, and type of aircraft. The solicitation gave offerors the option of offering dedicated aircraft which would be exclusively used for mail transportation or offering guaranteed lift which would guarantee a minimum payload for mail on an aircraft which could carry other cargo. Rates for dedicated aircraft would be calculated on a per-trip rate while rates for guaranteed lift would be per pound of mail carried.

In the evaluation of proposals, the relative superiority of proposed service would be a greater factor than price; however, for closely ranked proposals, price advantage would be more significant than technical superiority. The solicitation ranked service factors in the following order of importance:

^{1/}This is one of five protests against the Evergreen award. See CF Air Freight, Inc., P.S. Protest No 87-43, August 7, 1987.

(1) the degree to which an offeror's proposed network would speed delivery of the mail and enhance the efficiency of postal operations; (2) the total volume of mail for which an offeror's proposed network would provide air transportation; (3) the number of points listed in Specifications Part A which are included on an offeror's proposed network; (4) the length of time between required tender and deliver (with tighter time frames preferred); and (5) the extent to which the proposal offers to provide service via aircraft dedicated to the transportation of mail under the solicited contract.

Eighteen offers were received, including one from IJA. IJA's initial proposal offered service to all 21 cities by dedicated aircraft through a hub at Cincinnati. Representatives of the contracting officer held negotiations with all offerors in the competitive range, including IJA.^{2/} The notes of the IJA negotiation of April 8 indicate concern about short operational times where one aircraft was serving more than one destination and inadequate lift based on the aircraft chosen for various origin-destination pairs.

All negotiations were completed by April 19, and best and final offers were requested from the offerors within the competitive range. The contracting officer has stated that no actual date for receipt of best and final offers was established, but that it was made known to the offerors that award would be made by April 24.^{1/} IJA submitted a best and final offer on April 17. While the best and final offer significantly revised IJA's pricing structure, and provided various reassurances concerning the availability backup aircraft, it revised the schedule only with respect to Seattle.

On April 22, a Postal Service representative visited IJA's Denver headquarters to conduct a pre-award survey to ascertain the carrier's general capability of performing and to review its FAA safety records. IJA wrote a letter on April 22 to the members of the negotiation team which thanked them for their consideration of IJA's proposal and generally recapped its various aspects, including the experience of IJA's managers and staff, and IJA's ability to provide the hub service offered and expanded service when required. The three-page letter was sent by Express Mail service to the postal office box address specified in the solicitation for the receipt of proposals. The letter was received at the proper address in the L'Enfant Plaza Station on April 23,^{1/} but the contracting officer's representatives did not pick it up until April 23. This letter was not considered in the evaluation of IJA's offer.

Between April 20 and April 23, the members of the committee met to conduct their final review of those proposals within the competitive range. ON April 23 they

^{2/}The failure to establish a common cut-off for best and final offers was inconsistent with Postal Contracting Manual (PCM) 19-131.74(b) which requires that all offerors shall be informed of the specified date of closing of negotiations and that any revisions should be submitted by that date.

^{3/}Both the protester and contracting officer have stated that it was received on Friday, April 24, but the Express Mail label identifies the receipt at 1330 hours on April 23.

ranked the top seven offers in order of technical preference and made their recommendations to the contracting officer. The evaluators ranked Evergreen first among the offerors. On April 24, the contracting officer telephoned the Chairman of the Board of Evergreen and stated that the Postal Service had accepted Evergreen's best and final offer. On April 27, her staff called the other offerors, including IJA, informing them of the award to Evergreen. At a meeting with Evergreen's representatives the morning of April 30 in Washington, D.C., the contracting officer's representative handed Evergreen's Chairman of the Board a written acceptance of its offer signed by the contracting officer. Subsequently, P.S. Form 7405, Transportation Services Bid of Proposal and Contract, was signed by the Director of the Office of Transportation and International Services and the Chairman of the Board of Evergreen on the morning of May 7.

In a letter dated April 28 and received April 30, IJA protested the award, objecting to the evaluator's failure to consider its April 22 letter, which it characterized as detailing, by service area, how it would meet concerns noted by the negotiators in their earlier discussions. IJA also questioned the thoroughness of the April 22 pre-award survey, which it viewed as vague and general, without truly addressing the specific capability of IJA to provide the required service. The protest requested the reconsideration of IJA's proposal.

The contracting officer states that IJA was ranked third in the technical evaluation, but that, because its quality of service was considered significantly less advantageous to the Postal Service than Evergreen's,^{4/} award was made to Evergreen, even though IJA's price was lower. The report asserts that IJA is protesting only the failure to consider its April 22 letter, which, in accordance with the solicitation's clause concerning late offers and modifications, was not eligible for consideration.^{5/} The contracting officer notes that, even if the

^{4/}The contracting officer notes in supplemental comments that IJA did not have a detailed plan for operating its transfer hub, from which she concluded that it was unlikely that IJA would meet the June 6 service commencement date.

^{5/}This clause provides, in part, that:

- (a) Offers and modifications of offers or withdrawals thereof received at the office designated in the solicitation after the exact hour and date specified for receipt will not be considered unless they are received before award is made and, except for withdrawals under negotiated solicitations, either:

* * *

- (ii) they were sent by Express Mail service (post office to addressee) not later than the second calendar day (excluding Saturdays, Sundays, and Federal Holidays) prior to the date specified for receipt, or
- (iii) they were sent by mail ... to the precise depository prescribed in the solicitation, and it is determined by the Head of the Procuring Activity that the late receipt was due solely to mishandling after receipt by the office designated to receive offers.

* * *

- (d) If this solicitation is negotiated, consideration will also be given to:

modification had been considered, the letter would not have helped the evaluation of IJA's proposal because it contained only general, conclusory statements which only restated proposals made in its best and final offer.

On June 22, IJA submitted rebuttal comments in which it alleges that the Postal service failed to evaluate IJA's proposal properly and that it had met the service requirements for lift capacity, schedule and back-up lift, and corrected any deficiencies in its final offer. IJA also indicates that the pre-award survey was too general to be anything other than a mere formality and that the result of the Postal Service's cavalier approach was award to Evergreen at a much higher price than that offered by IJA.

The contracting officer replies that the issues raised in IJA's reply comments are untimely as they were received more than fifteen working days after contract award. She states that IJA's proposal was rated lower than Evergreen's because IJA did not have a detailed plan for hub operation in that it could not identify the building which it planned to use, and was, therefore, unlikely to be capable of implementing an operational system by June 6.

We first examine the issues raised by IJA to determine whether they have been raised in a timely manner. This office has no jurisdiction over a protest issue which has been untimely raised. Omnicon, Inc., P.S. Protest No. 84-24, June 27, 1984; Southern California Copico, Inc., P.S. Protest No. 83-2, August 31, 1983. Unlike the Comptroller General, we have no authority to waive or disregard an issue of timeliness in a particular case. CF Air Transport Association of America, P.S. Protest No. 84-29, May 17, 1984, aff's on reconsideration, June 1, 1984. Submissions in the course of a bid protest which establish new and independent bases for protest must independently meet the timeliness requirements set out in the protest regulations. Evergreen International Airlines, Inc., P.S. Protest No. 86-07, May 5, 1986.

IJA's protest regarding the lack of consideration of its April 22 letter in the evaluation of its proposal and the generality of the pre-award survey are timely, but the issues first raised in its supplemental comments of June 19, are untimely. The contract was awarded at least as early as April 30 when the written acceptance was handed to Evergreen.^{1/} IJA's protest against the evaluation is untimely because it was received more than 15 working days after contract award. PCM 2-407.8 d. (3);

* * *

(ii) normal offer revisions by offerors selected for discussion, received before the negotiation cut-off time established, and

(iii) offers and modifications of offers received before award when determined by the Head of Procuring Activity to contain an overriding cost or technical benefit to the Postal Service.

The report contends that the letter was sent by Express Mail service too late to be considered under the exception in (a)(ii) of the late offer clause because bid and final offers were due by April 21, that the lateness of the modification was not due solely to the mishandling after receipt by the office designated to receive offers, and that the modification contained no overriding benefit to allow late consideration.

^{6/}See CF Air Freight, Inc., P.S. Protest No. 87-43, August 7, 1987.

see CACI Integrations Services, Inc., P.S. Protest No. 87-79, August 27, 1987; Cincom Systems, Inc., P.S. Protest No. 76-80, April 25, 1977.

In the absence of a set time for the submission of best and final offers, the contracting officer's assertion that IJA's letter was late and did not fall within an exception in the late offer clause is incorrect. Since no cut-off date was established, the only date of which offerors were aware was the April 24 date anticipated for contract award. The April 22 letter received on April 23 was entitled to consideration.

We cannot overturn, however, the contracting officer's determination that the April 22 letter, if considered, would not have affected the evaluation of its proposal. Determinations of a contracting officer will not be overturned unless they are arbitrary, capricious, or unsupported by substantial evidence. POVECO, Inc., et al., P.S. Protest No. 85-43, October 30, 1983; American Airlines, Inc., P.S. Protest No. 84-72, December 14, 1984. IJA's best and final offer, dated April 15, is detailed in scope and explanation. The April 22 letter covered, in much more general terms, the same issues.

The contracting officer's determination that the April 22 letter would not have materially affected the evaluation of IJA's proposal is reasonable and supported by the evidence in the protest file. Therefore, we cannot overturn this determination. IJA's contentions concerning the adequacy of the pre-award survey are also mistaken. The contracting officer has discretion as to whether a pre-award survey is necessary in a particular case. Artech Corporation, P.S. Protest No. 84-58, October 5, 1984 (citing cases). When a pre-award survey is conducted, it is for the sole purpose of determining the responsibility of an offeror; the assessment of a pre-award survey does not affect the evaluation of an offeror's proposal. See Pharmaceutical Systems, Inc., Comp. Gen. Dec. B-221847, May 19, 1986; 86-1 CPD & 469; La Pointe Industries, Inc., comp. Gen. Dec. B-222023, May 14, 1986, 86-1 CPD & 461.

The protest is dismissed in part and denied in part.

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[Compared to original 3/3/93 WJJ]